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I. F. Stone's Weekly

VOL. VIII, NO. 9 MARCH 7, 1960 WASHINGTON, D. C. 15 CENTS

Balancing Away the Fifth Amendment, Too?

The Supreme Court has chosen an ill-timed moment to throw new victims to the House Un-American Activities Committee. The lost appeals of the two social workers in *Nelson and Globe* v. *California* come just when Chairman Walter and his colleagues, by attacking the National Council of Churches in the affair of the Air Force manual (see page 2), have been demonstrating how closely their activities duplicate McCarthy's. The implication that the armed forces are soft on communism, and our country's largest Protestant organization suspect for subversion, seems a replay of the McCarthy era. At such a time, when the menace of the Committee, its ignorance and arrogance, are clearer than ever, the Supreme Court has in effect reversed the Slochower decision, reducing the area of protection afforded witnesses by the Fifth amendment.

Enriching the Literature of Sophistry

In *Slochower* four years ago, Mr. Justice Clark said in a 5-to-4 decision (with Harlan, Reed, Burton and Minton dissenting) that the privilege against self-incrimination "would be reduced to a hollow mockery" if regarded as a confession of guilt and made the basis for discharge. Now in the case of Arthur Globe (with Black, Douglas and Brennan dissenting; Warren abstaining), Mr. Justice Clark says Globe was fired not for taking the Fifth but for "insubordination," since he had been instructed by Los Angeles authorities under State law to answer questions asked him by the Committee. This deserves a place in the primers of logic. You cannot fire a man for taking the Fifth but you can fire him for disobeying an order *not* to take the Fifth! No matter how you slice it this still comes out as punishing a man for using a privilege given him by the Constitution. It is another step in the whittling away process begun in 1958 when two Justices who had dissented in *Slochower* won Clark and Frankfurter to their side with ingenious subterfuges for circumventing that decision, and tipped the Court 5-to-4 the other way. Mr. Justice Harlan in *Lerner* v. *Casey* upheld the dismissal of a New York subway guard on the ground that while he had a right to take the Fifth this showed "lack of candor." Similarly Mr. Justice Burton in *Beilan* v. *Board of Education* upheld the dismissal of a Philadelphia school teacher on the ground that taking the Fifth proved "incompetency" as a teacher. These holdings enrich the literature of sophistry.

In the *Slochower* case, Mr. Justice Clark began with a statement of the Frankfurter "balancing" theory. The problem, Clark said, lay in "balancing the State's interest in the loyalty of those in its service" against the "traditional safeguards of individual rights." He decided that Prof. Harry Slochower's invocation of the Fifth Amendment was not proper grounds for discharge because the questions asked him by the Senate Internal Security Committee bore no relation to his duties as a teacher and because his membership in the Communist party 12 years earlier had long been disclosed to the New York City Board of Education. The facts in the case of the Los Angeles social workers remarkably parallel those of *Slochower*. California, like New York City, has a law making refusal to answer, grounds for dismissal from public employment. The questions asked the social workers by the Un-American Activities Committee bore no relation to their duties. The dark spots in their political past were known to their employers. They had been investigated, had taken loyalty oaths and could have been prosecuted if the House Committee had any new evidence. Their hearing, like Slochower's, sensationally exploited the rehash of stale material in a context where witnesses may have feared that if they did not take the Fifth on all political questions they might be held to have waived their privilege and been called upon to name others. A careful review of the record indicates that Mr. Globe's skeleton-in-the-closet was association with the John Reed Club (misspelt John *Reid* in the Court's opinion as in the Committee records) when he was in college. Mr. Nelson's was membership in the United Public Workers from 1942 to 1944.* Neither is exactly a crime.

Somebody's Been Peeping in the Kremlin Archives

"You say there has been no establishment in this country of subversive activities when our atomic secrets were stolen and now rest in the archives of the Kremlin because of subversives in government?"

—Question put to Mr. Arthur Glove by Scherer (R. Ohio) in the 1956 Los Angeles Un-American Activities hearing which led to his discharge.

Balancing or Appeasing?

These cases illustrate the unpredictable mysteries of the "balancing" process. Why, when the facts were so alike, did the shifting majority balance the scales so differently in 1960 from 1956? What were the Justices, in fact, balancing? No question of security was involved for California. On a genuine balance, the country's need for curbing the Committee outweighs risks far more real than those disclosed in these new appeals. Were Frankfurter, Harlan and Clark really balancing their own conception of what is politic, their desire to appease rightist critics of the Court, against the urgent necessity to stop the steady erosion of Constitutional safeguards?

*** If this case had not come up from California and had Warren participated, Nelson would have won since in his case—he had permanent while Globe had only a temporary employment status—the Court split 4-to-4.**

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Incomplete Count Shows Thousands, Not Hundreds, of Church Affiliations With Reds

Glimpses of Air Force Secretary Sharp on the Un-American Griddle

Mr. [Richard] ARENS [Staff Director Un-Amer. Act. Com.]. Mr. Secretary, when you issued your press release repudiating the publication as representing the Air Force views, and issued your apology to the National Council of Churches of Christ in the USA, did you by that act mean to convey the impression that the Air Force was convinced that the National Council of Churches was not infiltrated by fellow-travellers?

Secretary [of the Air Force Dudley C.] SHARP. No. I did not intend any concurrence with this statement, or objection to the statement as to its validity. I felt simply that this kind of statement should not be made in an Air Force publication. . . .

Mr. ARENS. Did you, in your statement of repudiation, intend a repudiation of the integrity, validity or accuracy of the testimony before the Committee on Un-American Activities which is quoted in this manuel?

Secretary SHARP. No sir . . .

Walter Guilty of Understating Red Menace

Mr. ARENS. Chairman [Walter] issued a statement to the effect that the leadership of the National Council of Churches had hundreds or at least over 100 affiliations with Communist fronts and causes. Since then we have made careful but yet incomplete checks, and it is a complete understatement.

Thus far of the leadership of the National Council of Churches we have found over 100 persons in leadership capacity with either Communist front records or records of service to Communist causes. The aggregate affiliations of the leadership, instead of being in the hundreds as the Chairman first indicated is now, according to our latest count, into the thousands, and we have yet to complete our check . . .

Mr. [Donald L.] JACKSON (R. Cal.). The effect of the action taken by the Air Force, Mr. Secretary, was to tell 180 million people in this country by the retraction of this, that the Air Force did not believe it . . .

Secretary SHARP. Mr. Jackson, I think it is very unfortunate if that is the impression we gave . . .

A Black Eye for the Committee

Mr. [Clyde] DOYLE (D. Cal.). My mail is such that it indicates that the work of this Committee in the minds of the people out West that have read the newspaper reports—that the work of this committee is discredited as a result of the unfortunate apology and letter by the Secretary.

The CHAIRMAN [Walter]. You may call it unfortunate. I call it stupid . . .

Mr. [Edwin E.] WILLIS (D. La.). It is a black eye on this committee . . .

Secretary SHARP. We certainly did not intend any aspersions on this Committee . . .

Good for the Minds of Our Youngsters

The CHAIRMAN. This does not charge the National Council of Churches as being a proscribed organization at all. It merely states that the 95 persons who served on the project [for a revised version of the Bible] which they sponsored have been affiliated with pro-Communist fronts. I think that is a great example to show a youngster . . .

Mr. [Morgan M.] MOULDER (*D. Mo.*). Is it your plan to revise the manuals? . . . In the process of doing that, will you confer with the Committee on Un-American Activities and the Internal Security Committee and the Attorney General's office and the FBI for any information which you may wish to use in the Manual?

Secretary SHARP. Yes, sir. I would hope we would, to be sure it is authentic . . .

The CHAIRMAN. I am looking now at an article that appeared in the paper this morning concerning a resolution purportedly adopted by the General Board of the National Council of Churches in Oklahoma City. The resolution stated that the Air Force had violated the guarantee of "the free exercise of religion" contained in the First Amendment.

This is the sort of thing this "fine" organization is capable of. There is nothing in this manual, is there, that indicates an interference with the free exercise of religion?

Scherer Unmasks the True Purpose

Mr. SCHERER [interrupting, before the witness could answer—Sharp never did get a change to answer—IFS]. They don't want freedom of religion. They want freedom of criticism . . .

Mr. JACKSON. Is any mention at all going to be made in the new manual with respect to the efforts of the Communist Party to infiltrate into church institutions?

Secretary SHARP. I would hope so, yes, sir . . .

Mr. DOYLE. I would suggest that the new manual would direct the attention of the Air Force personnel further than to churches and schools.

Mr. JACKSON. I did not mean to limit it.

Doyle Wants Labor Unions Included, Too

Mr. DOYLE. Directed to all and any organizations, such as labor unions, or others. Do not limit it to churches and schools. That is my suggestion . . .

Mr. JACKSON. Is any action contemplated, disciplinary or in reprisal, against Mr. Hyde who was responsible, as I understand, for writing this material?

Secretary SHARP. This matter has not been finally decided yet. I think that people who do not follow their instructions—and it might appear that Mr. Hyde had not—should be certainly reprimanded, if that is the case . . .

The CHAIRMAN. Let me tell you something. If you so much as say "Naughty boy," to this group of people who are far more expert than you are, it will blow that up out of all proportion. They will have him shot at sunrise, figuratively speaking, for telling the truth.

Mr. JACKSON. Furthermore, some sort of hell will break loose on the floor of the House of Representatives . . .

—Un-American Activities Committee, Feb. 25.

Pious Suggestion from Patriotic Citizeness

To the Editor of the New York Times:

Wouldn't it be helpful if Representative Walter were to supply a list of churches it is safe to attend?

Bernice Chase

—New York Times, Feb. 27.

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How and Why Round-the-Clock Senate Sessions Pressure the North

The effect of the Senate's round-the-clock sessions is to wear down the Northerners so that (1) enough Republicans can be persuaded to vote for cloture and (2) the civil rights liberals can be reconciled to accepting the weak House bill and relinquishing their effort to have the Congress go on record in support of school desegregation. Thus the round-the-clock session is tailored to the requirements of the Texas leadership which wants to inch forward only on voting rights. Politically and psychologically, however, it seems to us more important to get a bill through Congress endorsing the Supreme Court's school decision. That *was* judicial legislation, an affirmation of a changed public policy. It is bad for the country and bad for the Court to leave the latter in an exposed position on this issue, to let it carry the burden without help from Congress.

The decision by the Court last Monday in the Terrell County, Georgia, voting case overturns only the first of a series of legal hurdles erected by the South to avoid compliance with the voting provisions of the 1957 civil rights act. This first decision upheld the act's constitutionality as applied to State officials. The Justice Department must now go back and obtain a civil injunction against the Georgia registrars. If an injunction is obtained and the registrars resign, the question will arise whether the injunction can be applied against their successors and if necessary against the State. Awaiting argument before the Court is a case from Macon County, Alabama, the Tuskegee case, involving the latter question. Already argued and awaiting decision are two companion cases from Louisiana where State registrars obtained State court injunctions against the Civil Rights Commission when subpoenaed by it. The defect of the 1957 act is that each applicant for registration may have to litigate separately for enforcement of his rights. The South is preparing for a long and leisurely sitdown on voting rights in the courts, and the best answer by the Negroes in our opinion is the spreading sitdown of their own. In the one party South, even if the Negro gets the right to vote, it might take him a generation to win the right to sit and be served at a lunch counter like any normal human being. He can win it faster by non-violent mass action.

On the Bogy of 175 Soviet Divisions

"An inescapable concern of Western Europe is the threat to its security posed by 175 Soviet divisions, quite apart from Soviet nuclear armaments."

—"Acheson Upholds Bonn on Summit," article by former Secretary of State, New York Times, Feb. 29.

"It is clearly high time that the NATO authorities gave up using the time-honored figure of 175 Soviet divisions as a bogy for frightening their member countries. The Russians could not man anything like that number of divisions even on present western estimates of Soviet strengths."

—The Times (London) Editorial, "Russia's Manpower," on the unilateral cuts in the Red Army, Jan. 15.

New AEC Appointee Thinks Fallout Alarm Unfounded — Favors New Tests

The Joint Committee on Atomic Energy was set up to be the Congressional watchdog over the Atomic Energy Commission. Since the appointment of John A. McCone as AEC Chairman, the Committee has evolved instead into a lapdog, content to approve whatever the AEC proposes. We hope the scientific community will insist that the Joint Committee hold real hearings on the new appointee to the AEC, and that such organizations as the Federation of American Scientists and the National Committee for A Sane Nuclear Policy will ask to be heard.

Robert E. Wilson, former chairman of Standard Oil of Indiana, the new nominee, is another of those retired big business men picked by McCone. He has all the right prejudices, believes alarm over fallout unfounded, thinks resumed testing may be necessary and is sure the Russians will try to cheat (see box next column).

For this glimpse of his views we are indebted to an article by Dr. Ralph Lapp in last September's issue of the *Bulletin of the Atomic Scientists*. Dr. Lapp called attention to a letter Mr. Wilson had sent the *Chicago Daily News*. In this letter Mr. Wilson criticized the views of as respected a geneticist as Dr. James F. Crow, calling them "sensational and unfounded." Before the Holifield committee hearings last May on fallout, Dr. Crow had said that if testing continued at the rate of the past decade "it is likely that tens or hundreds of thousands or more persons will be diseased, or deformed, or die prematurely."

Mr. Wilson has been a member of the AEC's General Advisory Committee and signed the report it released as the Holifield hearings began. This report aroused Senator Anderson's anger. The science it embodied was that of public relations. It contained statements designed to generate fallacious headlines about fallout being "no more dangerous than drinking water" or background radiation in areas where "human beings have lived for many generations." The fallacies were skillfully analyzed by Dr. Lapp in that same issue of the *Bulletin*.

The AEC has not had an independent member since Thomas E. Murray retired. It has never had a biologist member. A thorough airing of Mr. Wilson's views and the need for some independent voice on the AEC may at least build up pressure for a more impressive appointment when the next vacancy occurs.

Useful Background or the Right Prejudices?

"Robert E. Wilson, nominated by President Eisenhower to be a member of the Atomic Energy Commission, should bring a useful industrial and engineering background . . . The AEC suffers from a considerable lack of confidence in its appraisal of the biological risks of radioactivity. Incidentally, the Joint Committee on Atomic Energy ought to be interested in Mr. Wilson's views on this point."

—Wash. Post edit, "New Man at the AEC," Feb. 29.

". . . the public concern over fallout is very much exaggerated. This public concern might indeed be dangerous if it were to prevent moderate further testing to improve our weapons, which the Russians will undoubtedly do secretly if there isn't provision for very thorough inspection."

—Robert E. Wilson, "Fallout Alarm Unfounded," letter to editor, Chicago Daily News, May 28, 1959.

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How the Univ. of California Can Correct That Unfortunate Slur on the FBI

Nixon (With Ike and Notre Dame) Against Student Loyalty Disclaimer

Among other Developments No One in His Right Mind Would Have Predicted A Few Years Ago: Nixon has come out in favor of repealing the "disclaimer" portion of the loyalty oath required by the National Defense Education Act for scholarship applicants. Nixon first put himself on record in response to a question at the California Newspaper Publishers convention in Los Angeles Feb 6. He did so again Feb. 22 in reply to a letter from the heads of three Midwestern universities: Chancellor Kimpton of the University of Chicago, President Hancher of Iowa State, and—another political miracle—the Rev. Theodore M. Hesburgh of Notre Dame. They asked the Vice President to support Eisenhower's position for repeal of the requirement that students sign an affidavit disclaiming membership in any subversive organization. They made public his reply Feb. 25 in Chicago but apparently it was not carried by the wire services and the only Eastern paper in which I saw it was the *New York Herald-Tribune* (Feb. 26). "It is my opinion," the Vice President wrote, "that the affirmative loyalty oath by itself covers the situation, making the disclaimer affidavit unnecessary and, since it is not a general requirement for all recipients of government benefits, unwarranted." The prose style will lead few people to confuse the Vice President with Patrick Henry but the endorsement is welcome nonetheless.

Capital's First Public Meeting on Sobell Case

Another minor but significant barometric indicator was the holding in Washington, D. C., Feb. 26 of the capital's first public meeting on the Sobell case. The chairman was David H. Scull, the courageous Virginia printer, a Friend, who was held in contempt by a State court for refusing to answer questions put by a legislative committee investigating anti-segregationist groups, and was vindicated last year by the Supreme Court. Gerhard P. Van Arkel, a distinguished labor lawyer, spoke on the legal aspects of the Sobell case. Raymond Wilson, the respected executive secretary of the Friends Committee on National Legislation, discussed the moral issues. Helen Sobell, wife of the imprisoned man, also spoke and messages of support for the executive clemency campaign were read from three members of Congress, Harmon (*D. Ind.*), Meyer (*D. Vt.*) and Blatnik (*D. Minn.*). Benjamin Ginzburg, formerly staff director of the Hennings committee, sent an eloquent statement calling for commutation of sentence or other form of release "to rectify a grave injustice." This August, Sobell will have been in prison ten years. The severity of his 30-year sentence contrasts with the vagueness of the offense with which he was charged, and the thinness of the threads linking him with the Rosenbergs. Had he been willing to testify against them, he might have escaped indictment. Had he been tried separately, it would have been difficult to convict him. Executive clemency is long overdue.

We Know Who We'd Vote for If We Were A Cow

"He [Senator Kennedy] told 75 farmers in Bloomer [Wis.] that the American cow was the 'foster mother' of the human race and a great asset to the nation."

—New York Times, from Eau Claire, Wis., Feb. 27.

One Way to Make Amends to the FBI

We hope Governor Brown will not be content with the apology tendered the FBI by the regents of the University of California for including in entrance examinations a question which said, "What are the dangers to a democracy of a national police organization, like the FBI, which operates secretly and is unresponsive to public criticism?" One way to make amends would be to substitute a new question correcting the unfortunate implications of the one withdrawn. It might read along these lines, "The United States, while justly proud of its Bill of Rights, is handicapped in dealing with subversion by certain provisions which are a little archaic for modern conditions. What are the advantages of a national police organization, like the FBI, which operates in secret and can keep the government informed of dangerous utterances, associations and thinking? Illustrate from your own school experience, citing disturbing remarks you yourself have heard from classmates, and where possible, supplying names, addresses and thumb prints."

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Entered as Second Class Mail Matter Washington, D. C. Post Office

I. F. Stone's Weekly. Entered as Second Class Matter at Washington, D. C., under the Act of March 3, 1879. Post-dated Mondays but published every Thursday except the last two Thursdays of August and December at 5618 Nebraska Ave., N. W., Washington 15, D. C. An independent weekly published and edited by I. F. Stone: Circulation Manager, Esther M. Stone. Subscription: $5 in the U. S.; $6 in Canada; $10 elsewhere. Air Mail rates: $15 to Europe; $20 to Israel, Asia and Africa.

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